



PLANNING COMMISSION

Department of Urban Planning & Design • P.O. Box 27210 • Tucson, AZ 85726-7210

DATE: February 1, 2006

TO: Planning Commission
Albert Elias

FROM: Albert Elias AICP, Executive Secretary

SUBJECT: Land Use Code Amendment – Pay Day Lending Facilities

Issue – This is a public hearing before the Planning Commission for a *Land Use Code (LUC)* amendment intended to control the number of payday lending facilities operating within the City limits and to be consistent with similar ordinances adopted by Tucson area jurisdictions. Currently the *LUC* does not regulate payday lending facilities.

Recommendation – Staff recommends that the Planning Commission forward this item to the Mayor and Council with a recommendation for adoption.

Background – The proposed *LUC* amendment, addressing payday lending facilities, was presented to the Planning Commission on October 5, 2005 and January 17, 2006. During January 17th study session, staff provided a brief overview of the *LUC* amendment proposed and informed the Commission of the ordinances recently adopted by Pima County and South Tucson. Staff also provided information about similar efforts currently underway by the cities of Phoenix and Glendale. In addition, the Commission requested specific information to be provided for their review.

Surrounding Jurisdictions

The Pima County Board of Supervisors adopted an ordinance on December 6, 2005 that requires a conditional use process for payday facilities. The businesses must be located in the CB-2 (General Business) zone with a separation of 1,320 feet between like businesses and 500 feet from residential zones. A hearing notification area of three hundred feet from the proposed property is also required. On October 24, 2005, the City of South Tucson also adopted an ordinance that limits the concentration of payday facilities by restricting the location to commercial zones and requiring a separation between facilities, as well as a separation between the payday facilities and residential zones.

In addition, the City of Glendale and Phoenix are currently considering ordinances modeled after the Pima County ordinance. The cities of Peoria and Tempe Arizona have had ordinances in place since 2002 and 2005 respectively.

Staff believes that without a similar ordinance, the City of Tucson would likely experience an increasing concentration of these facilities within the city limits due to the restrictive zoning

in surrounding jurisdictions. In addition, the Mayor and Council have directed staff to proceed with an amendment that is consistent with those adopted by Pima County and South Tucson.

Discussion of the Amendment - Staff is proposing an amendment to the *LUC* that is consistent with Pima County and South Tucson and similar to ordinances adopted by Tempe and Peoria to ensure a regional zoning approach.

The proposed *LUC* amendment is provided as Attachment A and includes the following:

- Definition of the use that includes check-cashing services, loans for payment of a percentage fee, deferred presentment and auto title lenders.
- Limits the use to the C-2 and C-3 (Commercial) zones subject to criteria.
- Approval through a special exception process.
- Subject to a separation between facilities of 1320 feet and 500 feet of separation between the facility and residential zones.

Requiring 1,320 feet of separation between facilities and 500 feet between facilities and residential zones reduces the amount of commercial property available for payday lending locations. Staff analyzed the remaining amount of commercial property in the C-1, C-2 and C-3 zones once the separation criteria were applied. The results were: approximately 300 acres or 3% remaining in C-3, 577 acres or 6% remaining in C-2 and 207 acres or 2% remaining in C-1. By restricting payday lending store locations to the C-2 and C-3 zones and requiring approval by a special exception process, the use will be limited but opportunity for locating within the City will be provided. In addition, the City's zoning will more closely match the ordinances adopted by Pima County and South Tucson. Staff believes that the special exception process would be effective particularly to provide an opportunity for public input and with the separation criteria is an effective measure in limiting the concentration of these facilities.

Additional Information – The information that was requested by the Commission at the January 17, 2006, study session is provided below. The Southwest Center for Economic Integrity and the City of Tucson's Intergovernmental Relations Department will make presentations during the public hearing.

- 1) *Data on criminal activity associated with payday lending facilities* – According to the Tucson Police Department a total of four crimes were committed at payday lending facilities in 2005; two burglaries and two robberies. No information is available regarding the affects of payday lending facilities on adjacent properties.
- 2) *Informed response from the legal department regarding this type of ordinance, particularly if this type of ordinance is discriminatory* – This is addressed by the City Attorney's Office. See Attachment B.

- 3) *The reasons for a separation from residential zones* – Requiring a separation between payday establishments and residential zones provides consistency with the ordinances adopted by Pima County and South Tucson as well as other jurisdictions in the Phoenix metropolitan area. The separation further limits the facility locations while allowing ample opportunities for new facilities.
- 4) *The results of inaction* - Staff believes that without a similar ordinance, the City of Tucson would likely experience an increasing concentration of these facilities within the city limits due to the restrictive zoning processes required in surrounding jurisdictions.
- 5) *Is the definition too broad? Does it apply to credit unions?* – This is addressed by the City Attorney's Office. See Attachment B.
- 6) *What is being evaluated in a Special Exception process* – The LUC amendment proposed requires approval through a Special Exception process. This is an administrative procedure requiring a public hearing and approval by the Zoning Examiner in accordance with a Zoning Examiner Full Notice Procedure. The Zoning Examiner evaluates the request according to the following:
 - A. Meets the standards expressly applied by all adopted codes and regulations for that type of land use or for the Land Use Class applicable to the proposed use.
 - B. Does not adversely affect adjacent land uses or the surrounding neighborhood or that such adverse effects can be substantially mitigated through the use of additional conditions.
 - C. Provides for adequate and efficient vehicular and pedestrian access and circulation and vehicular parking.
 - D. Can be adequately and efficiently served by public facilities and services, such as water, stormwater drainage, fire and police protection, and solid and liquid waste disposal and/or collection as may be required by the City or the Pima County Health Department.
 - E. Complies with the *General Plan* and any applicable subregional, area, or neighborhood plan.

In approving an application, the Development Services Department Director or Zoning Examiner may impose such reasonable and appropriate conditions and safeguards as may be necessary to ensure compliance with the criteria for approval. Such conditions and safeguards may also be imposed to reduce or minimize any potentially injurious effects on adjacent properties; the character of the neighborhood; or the health, safety, or general welfare of the community. Such conditions may include, but not be limited to:

- A. Setbacks for structures or activities greater than the minimum required by the applicable zoning district.

- B. Structural or vegetative screening greater than that required by the landscaping and screening regulations of this Chapter to buffer the surrounding land uses from the proposed use.
 - C. Limitations on the height, size, or illumination of signs more restrictive than the applicable requirements of the Tucson Sign Code.
 - D. Limitations on the conduct of the proposed use, such as, but not limited to, hours of operation, or use of loudspeakers or external lighting, as necessary to protect adjacent land uses.
 - E. Dedication of necessary right-of-way for streets, alleys, drainageways, and utilities.
- 7) *Contact any association of Payday lenders* – Staff contacted the Community Financial Services Association of America (CFSA), the national membership trade association that provides services exclusively to the Deferred Presentment industry. CFSA represent approximately two-thirds of this market segment with over 8,000 stores nationwide. According to CFSA representatives, local chapters of the association do not exist and they are unaware of any other similar organizations representing the industry. Information about payday lenders is available at the CFSA website at <http://www.cfsa.net/>
- 8) *Information about what the City will be asking the Legislature.* Staff will present this information from the City's Intergovernmental Relations Office during the public hearing.
- 9) *Information about the bill on Payday Lending before the Legislature* – As of January 13, 2006, four bills are proposed: SB1006, HB2498, HB2330, and HB2546. The last three have not been first read and assigned to committees. Each bill is summarized below.

SB1006 – Establishes requirements for deferred presentment loans to members of the U.S. military or their spouses. The provisions include: prohibiting deferred presentment licensees from garnishing wages, prohibits collection activity during a military member's deployment to combat or during active duty, prohibits a licensee from contacting the member's employer about a deferred presentment debt, prohibits deferred presentment transactions from occurring in locations that the member's commanding officer disallows, binds a licensee to terms of repayment agreement negotiated through a military counsel or third party, requires licensee to provide written statement to a member of the military or the member's spouse stating the prohibited practices, before engaging in the transaction.

HB2546 – Establishes a provision to verbally provide information on fees charged to all telephone inquiries. Establishes that prior agreements be closed for at least 24 hours before the written agreement is executed. Prohibits "roll over" of transactions. Requires the licensee to access a database to verify whether the customer has

outstanding agreements, etc., before entering into another deferred presentment agreement.

HB2498 – Includes the following provisions: 1) a copy of the agreement translated into Spanish shall be provided on request of the customer, 2) that State law allows only one deferred presentment transaction at a time, 3) the customer shall have no other outstanding deferred presentment agreement, 4) customers who are prevented by law from extending an unpaid deferred presentment agreement may enter into a repayment plan.

HB2330 – The bill restricts the accrual of late fees for at least two weeks following the final extension of the presentment or deposit of a check.

- 10) *Information about where such corporations are based* – Staff contacted the Arizona Department of Financial Institutions (formerly named the Arizona Department of Banking) responsible for regulating such establishments. Department representatives reported that many of the payday stores are branches of a larger corporation under the same name (i.e., Ace America's Cash Express – a branch of Ace Cash Express, Inc.) or are established as Limited Liability Companies (i.e., 1 Stop Check Cashing \$ Payday & Title Loans, LLC, a branch of 1 Stop Check Cashing \$ Payday & Title Loans, LLC).
- 11) *Information about how such facilities affect property values, the quality of life in neighborhoods, and the extent to which this ordinance serves as mitigation* – As indicated by staff, the state legislation exempted short term loans from usury cap have been in place since 2000. Staff is unaware of any local land use studies associated with this particular business. To the extent the new facilities will be regulated and include notice to adjacent property owners as part of the special exception process, there will be greater opportunity to discuss and mitigate any negative impacts associated with this use. The process in and of itself encourages dialogue and assessment of the advantages and disadvantages of these facilities and an opportunity to understand the unique characteristics of each site.

Conclusion – Staff recommends that the Planning Commission forward this item to the Mayor and Council with a recommendation to adopt the attached *Land Use Code* amendment.

AE: AS: GM:JI/s:/CodeRev/Payday/PCPH020106

Attachments:

A – Draft Amendment

B – Legal Memorandum